

HAROLD W. MANIS
Claimant

KANSAS DEPARTMENT OF CORRECTIONS
Respondent

SELF INSURED
Insurance Carrier

ORDER

APPEARANCES

RECORD

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) The Appeals Board has jurisdiction to review the finding that claimant's injury did not arise out of and in the course of his employment. K.S.A. 44-534a.

(2) The Appeals Board finds, as did the Administrative Law Judge, claimant's injury did not arise out of or in the course of his employment.

Claimant, a correctional officer for respondent State of Kansas, worked, as assigned, at three locations in Topeka, Kansas. On the day of his accident, he was told to report to the Forbes Air Force Base facility. He normally worked from 2 pm to 10 pm but was asked to report 15 minutes early for a briefing. When claimant was only two blocks from his home, another car failed to yield at a yield sign and struck claimant's car, causing the injury which is the subject of this claim.

Claimant contends that the accident and resulting injuries arose out of and in the course of his employment. Analysis begins with the following "going and coming" rule in K.S.A. 44-508(f):

"The words 'arising out of and in the course of employment' as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence."

Claimant contends he fits within an exception to the "going and coming" rule because of his job duties. On occasion his work required that he travel between facilities during the work day. He occasionally transported prisoners to health care facilities for treatment. He was required to have a valid drivers license. He was also allowed to use a state vehicle when needed for his work. Claimant understood he was expected to be able to respond to different locations within a thirty (30) minute time line and believed this requirement effectively prohibited him from taking the bus to work.

Claimant relies on Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556 (1984) to support his argument. In that case the claimant was killed in a truck accident while driving home from a distant drill site. The Kansas Court of Appeals applied an exception to the "going and coming" rule and found the death to be compensable. The Court described the exception as follows:

"Kansas has long recognized one very basic exception to the 'going and coming' rule. That exception applies when the operation of a motor vehicle on the public roadways is an integral part of the employment or is inherent in the nature of the employment or is necessary to the employment, so that in his travels the employee was furthering the interests of his employer."

The facts in the Messenger help explain the exception. As a driller, claimant Messenger traveled daily from his home to distant drill sites to perform his job. The drill sites were mobile. Messenger had no permanent work site. The employer reimbursed Messenger for the travel at 20 cents per mile. In the Messenger decision, the Supreme Court notes that it is a common and accepted practice in the industry for drillers to live at some distance from the drill sites and travel daily. The Court found claimant's travel from the drill site home to be part of claimant's work and awarded benefits for the death which occurred during that travel.

The facts in the present case are materially different. Claimant worked at several locations but not at mobile work sites. He was not reimbursed for his travel to work. The work sites were local. In the Messenger case, the claimant could reasonably be considered working at the time he transported himself to a distant work site. The employer felt compelled to pay for the travel, suggesting the travel was, at least in part, work performed for the employer. The fact the sites were mobile seems important primarily because it made it impractical to hire only local employees and therefore required the long distance travel. The Appeals Board considers these factual differences to be dispositive. K.S.A. 44-508(f) requires that going to and from work be treated as a personal task. The Kansas Appellate decisions recognize there are some circumstances where travel to a work site

is not "going and coming" but is actually part of the work for the employer. The facts of this case do not fit that exception.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer, dated August 31, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of November, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS
Kathryn Myers, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director